

AMENDED IN SENATE JULY 6, 2004

AMENDED IN SENATE JUNE 17, 2004

AMENDED IN ASSEMBLY APRIL 28, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2897

Introduced by Assembly Member Bogh
(Principal coauthor: Senator Margett)

February 20, 2004

An act to amend Sections 7500, 7503, 7510, 7511, and 7515 of, and to repeal Section 7555 of the Penal Code, relating to prisoners, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2897, as amended, Bogh. Prisoners: medical testing.

Existing law makes legislative findings and declarations concerning the spread of the human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) within state and local correctional institutions. Existing law provides that a law enforcement employee who believes that he or she came into contact with bodily fluids of either an inmate of a correctional institution, a person who has been arrested or taken into custody, or a person on probation or parole, or an inmate of a correctional institution who believes that he or she has come into contact with the bodily fluids of another inmate may request an HIV test of that person. Existing law requires that the chief medical officer of a correctional facility decide whether to order a test of an inmate who is the subject of a report by a law enforcement officer within 5 days. *Existing law also provides that an inmate may request the testing*

of another inmate, as specified. Existing law provides that these provisions shall be repealed January 1, 2005, as specified.

This bill would delete the repeal of these provisions. This bill would amend legislative findings and declarations with respect to the exposure of law enforcement personnel to HIV. This bill would provide that an incident report filed by a law enforcement employee containing a request for HIV testing of an inmate shall not be delayed, as specified. This bill would require that the chief medical officer decide whether to order a test of an inmate who is the subject of a report ~~by a law enforcement employee~~ within 24 hours of receiving the report. This bill would provide that a test shall be ordered if the chief medical officer finds that there is a significant risk that HIV was transmitted. This bill would provide *that* an appeal ~~by a law enforcement employee~~ of the decision of a chief medical officer whether to order the subject of a report to undergo HIV testing shall be heard within 7 calendar days. This bill would also provide that ~~when if~~ an appeal is filed ~~by a law enforcement employee~~, the decision shall be rendered within 2 days of the hearing.

By requiring local officials to perform new duties and additional duties, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7500 of the Penal Code is amended to
2 read:

1 7500. The Legislature finds and declares all of the following:

2 (a) The public peace, health, and safety is endangered by the
3 spread of the human immunodeficiency virus (HIV) and acquired
4 immune deficiency syndrome (AIDS) within state and local
5 correctional institutions.

6 (b) The spread of AIDS within prison and jail populations
7 presents a grave danger to inmates within those populations, law
8 enforcement personnel, and other persons in contact with a
9 prisoner infected with the AIDS virus, both during and after the
10 prisoner's confinement. Law enforcement personnel and prisoners
11 are particularly vulnerable to this danger, due to the high number
12 of assaults, violent acts, and transmissions of bodily fluids that
13 occur within correctional institutions.

14 (c) HIV has the potential of spreading more rapidly within the
15 closed society of correctional institutions than outside these
16 institutions. This major public health problem is compounded by
17 the further potential of rapid spread of communicable disease
18 outside correctional institutions, through contacts of an infected
19 prisoner who is not treated and monitored upon his or her release,
20 or by law enforcement employees who are unknowingly infected.

21 (d) New diseases of epidemic proportions such as AIDS may
22 suddenly and tragically infect large numbers of people. This title
23 primarily addresses a current problem of this nature, the spread of
24 HIV among those in correctional institutions and among the
25 people of California.

26 (e) HIV and AIDS pose a major threat to the public health and
27 safety of those governmental employees and others whose
28 responsibilities bring them into direct contact with persons
29 afflicted with those illnesses, and the protection of the health and
30 safety of these personnel is of equal importance to the people of
31 the State of California as the protection of the health of those
32 afflicted with the diseases who are held in custodial situations.

33 (f) Testing described in this title of individuals housed within
34 state and local correctional facilities for evidence of infection by
35 HIV would help to provide a level of information necessary for
36 effective disease control within these institutions and would help
37 to preserve the health of public employees, inmates, and persons
38 in custody, as well as that of the public at large. This testing is not
39 intended to be, and shall not be construed as, a prototypical method
40 of disease control for the public at large.

SEC. 2. Section 7503 of the Penal Code is amended to read:

7503. The Department of Corrections, the Department of the Youth Authority, and county health officers shall adopt guidelines permitting a chief medical officer to delegate his or her medical responsibilities under this title to other qualified physicians and surgeons, and his or her nonmedical responsibilities to other qualified persons, as appropriate. The chief medical officer shall not, however, delegate the duty to determine whether mandatory testing is required as provided for in Chapter 2 (commencing with Section 7510) except to another qualified physician designated to act as chief medical officer in the chief medical officer's absence.

SEC. 3. Section 7510 of the Penal Code is amended to read:

7510. (a) A law enforcement employee who believes that he or she came into contact with bodily fluids of either an inmate of a correctional institution, a person not in a correctional institution who has been arrested or taken into custody whether or not the person has been charged with a crime, including a person detained for or charged with an offense for which he or she may be made a ward of the court under Section 602 of the Welfare and Institutions Code, or a person on probation or parole due to conviction of a crime, shall report the incident through the completion of a form provided by the State Department of Health Services. The form shall be directed to the chief medical officer, as defined in subdivision (c), who serves the applicable law enforcement agency. Utilizing this form the law enforcement employee may request an HIV test of the person who is the subject of the report. The forms may be combined with regular incident reports or other forms used by the correctional institution or law enforcement agency, however the processing of a form by the chief medical officer containing a request for HIV testing of the subject person shall not be delayed by the processing of other reports or forms.

(b) The report required by subdivision (a) shall be submitted by the end of the law enforcement employee's shift during which the incident occurred, or if not practicable, as soon as possible, but no longer than two days after the incident, except that the chief medical officer may waive this filing period requirement if he or she finds that good cause exists. The report shall include names of witnesses to the incident, names of persons involved in the incident, and if feasible, any written statements from these parties.

1 The law enforcement employee shall assist in the investigation of
2 the incident, as requested by the chief medical officer.

3 (c) For purposes of this section and Section 7511, “chief
4 medical officer” means:

5 (1) In the case of a report filed by a staff member of a state
6 prison, the chief medical officer of that facility.

7 (2) In the case of a parole officer filing a report, the chief
8 medical officer of the nearest state prison.

9 (3) In the case of a report filed by an employee of the
10 Department of the Youth Authority, the chief medical officer of the
11 facility.

12 (4) In the case of a report filed against a subject who is an
13 inmate of a city or county jail or a county- or city-operated juvenile
14 facility, or who has been arrested or taken into custody whether or
15 not the person has been charged with a crime, but who is not in a
16 correctional facility, including a person detained for or charged
17 with an offense for which he or she may be made a ward of the
18 court under Section 602 of the Welfare and Institutions Code, the
19 county health officer of the county in which the individual is jailed
20 or charged with the crime.

21 (5) In the case of a report filed by a probation officer, the county
22 health officer of the county in which the probation officer is
23 employed.

24 (6) In any instance where the chief medical officer, as
25 determined pursuant to this subdivision, is not a physician and
26 surgeon, the chief medical officer shall designate a physician and
27 surgeon to perform his or her duties under this title.

28 SEC. 4. Section 7511 of the Penal Code is amended to read:

29 7511. (a) The chief medical officer shall, regardless of
30 whether a report filed pursuant to Section 7510 contains a request
31 for HIV testing, decide whether or not to require HIV testing of the
32 inmate or other person who is the subject of the report filed
33 pursuant to Section 7510, within 24 hours of receipt of the report.
34 If the chief medical officer decides to require HIV testing, he or
35 she shall specify in his or her decision the circumstances, if any,
36 under which followup testing will also be required.

37 (b) The chief medical officer shall order an HIV test only if he
38 or she finds that, considering all of the facts and circumstances,
39 there is a significant risk that HIV was transmitted. In making this

1 decision, the chief medical officer shall take the following factors
2 into consideration:

3 (1) Whether an exchange of bodily fluids occurred which could
4 have resulted in a significant risk of AIDS infection, based on the
5 latest written guidelines and standards established by the federal
6 Centers for Disease Control and the State Department of Health
7 Services.

8 (2) Whether the person exhibits medical conditions or clinical
9 findings consistent with HIV infection.

10 (3) Whether the health of the institution staff or inmates may
11 have been endangered as to HIV infection resulting from the
12 reported incident.

13 (c) Prior to reaching a decision, the chief medical officer shall
14 receive written or oral testimony from the law enforcement
15 employee filing the report, from the subject of the report, and from
16 witnesses to the incident, as he or she deems necessary for a
17 complete investigation. The decision shall be in writing and shall
18 state the reasons for the decision. A copy shall be provided by the
19 chief medical officer to the law enforcement employee who filed
20 the report and to the subject of the report, and where the subject is
21 a minor, to the parents or guardian of the minor, unless the parent
22 or guardian of the minor cannot be located.

23 SEC. 5. Section 7515 of the Penal Code is amended to read:

24 7515. (a) A decision of the chief medical officer made
25 pursuant to Section 7511, 7512, or 7516 may be appealed, within
26 three calendar days of receipt of the decision, to a three-person
27 panel, either by the person required to be tested, his or her parent
28 or guardian when the subject is a minor, the law enforcement
29 employee filing a report pursuant to either Section 7510 or 7516,
30 or the person requesting testing pursuant to Section 7512,
31 whichever is applicable, or the chief medical officer, upon his or
32 her own motion. If no request for appeal is filed under this
33 subdivision, the chief medical officer's decision shall be final.

34 (b) Depending upon which entity has jurisdiction over the
35 person requesting or appealing a test, the Department of
36 Corrections, the Department of the Youth Authority, the county,
37 the city, or the county and city shall convene the appeal panel and
38 shall ensure that the appeal is heard ~~within 30 calendar days from~~
39 ~~the date an appeal request is filed pursuant to subdivision (a).~~
40 ~~Appeals filed by a law enforcement employee pursuant to a request~~

1 ~~made under Section 7510 shall be heard~~ within seven calendar
2 days.

3 (c) A panel required pursuant to subdivision (a) or (b) shall
4 consist of three members, as follows:

5 (1) The chief medical officer making the original decision.

6 (2) A physician and surgeon who has knowledge in the
7 diagnosis, treatment, and transmission of HIV, selected by the
8 Department of Corrections, the Department of the Youth
9 Authority, the county, the city, or the county and city. The
10 physician and surgeon appointed pursuant to this paragraph shall
11 preside at the hearing and serve as chairperson.

12 (3) A physician and surgeon not on the staff of, or under
13 contract with, a state, county, city, or county and city correctional
14 institution or with an employer of a law enforcement employee as
15 defined in subdivision (b) of Section 7502, and who has
16 knowledge of the diagnosis, treatment, and transmission of HIV.
17 The physician and surgeon appointed pursuant to this paragraph
18 shall be selected by the State Department of Health Services from
19 a list of persons to be compiled by that department. The State
20 Department of Health Services shall adopt standards for selecting
21 persons for the list required by this paragraph, as well as for their
22 reimbursement, and shall, to the extent possible, utilize its normal
23 process for selecting consultants in compiling this list.

24 The Legislature finds and declares that the presence of a
25 physician and surgeon on the panel who is selected by the State
26 Department of Health Services enhances the objectivity of the
27 panel, and it is the intent of the Legislature that the State
28 Department of Health Services make every attempt to comply with
29 this subdivision.

30 (d) The Department of Corrections, the county, the city, or the
31 county and city shall notify the Office of AIDS in the State
32 Department of Health Services when a panel must be convened
33 under subdivision (a). Within ~~10~~ *two* calendar days of the
34 notification, a physician and surgeon appointed under paragraph
35 (3) of subdivision (c) shall reach agreement with the Department
36 of Corrections, the county, the city, or the county and city on a date
37 for the hearing that complies with subdivision (b). ~~For appeals~~
38 ~~filed by a law enforcement employee pursuant to a request made~~
39 ~~under Section 7510, within two calendar days of the notification,~~
40 ~~a physician and surgeon appointed under paragraph (3) of~~

~~subdivision (e) shall reach agreement with the Department of Corrections, the county, the city, or the county and city on a date for the hearing that complies with subdivision (e).~~

(e) If the Office of AIDS in the State Department of Health Services fails to comply with subdivision (d) or the physician and surgeon appointed under paragraph (3) of subdivision (c) fails to attend the scheduled hearing, the Department of Corrections, the county, the city, or the county and city shall appoint a physician or surgeon who has knowledge of the diagnosis, treatment, and transmission of HIV to serve on the appeals panel to replace the physician and surgeon required under paragraph (3) of subdivision (c). The Department of Corrections, the county, the city, or the county and city shall have standards for selecting persons under this subdivision and for their reimbursement.

The Department of Corrections, the Department of the Youth Authority, the county, the city, or the county and city shall, whenever feasible, create, and utilize ongoing panels to hear appeals under this section. The membership of the panel shall meet the requirements of paragraphs (1), (2), and (3) of subdivision (c).

No panel shall be created pursuant to this paragraph by a county, city, or county and city correctional institution except with the prior approval of the local health officer.

(f) A hearing conducted pursuant to this section shall be closed, except that each of the following persons shall have the right to attend the hearing, speak on the issues presented at the hearing, and call witnesses to testify at the hearing:

(1) The chief medical officer, who may also bring staff essential to the hearing, as well as the other two members of the panel.

(2) The subject of the chief medical officer's decision, except that a subject who is a minor may attend only with the consent of his or her parent or guardian and, if the subject is a minor, his or her parent or guardian.

(3) The law enforcement employee filing the report pursuant to Section 7510, or the person requesting HIV testing pursuant to Section 7512, whichever is applicable and, if the person is a minor, his or her parent or guardian.

(g) The subject of the test, or the person requesting the test pursuant to Section 7512, or who filed the report pursuant to

1 Section 7510, whichever is applicable, may appoint a
2 representative to attend the hearing in order to assist him or her.

3 (h) When a hearing is sought pursuant to this section, ~~the~~
4 ~~decision shall be rendered within 10 days of the date upon which~~
5 ~~the appeal is filed pursuant to subdivision (a). When an appeal is~~
6 ~~or~~ filed by a law enforcement employee pursuant to a request made
7 under Section 7510, the decision shall be rendered within two days
8 of the hearing. A unanimous vote of the panel shall be necessary
9 in order to require that the subject of the hearing undergo HIV
10 testing.

11 The criteria specified in Section 7511 for use by the chief
12 medical officer shall also be utilized by the panel in making its
13 decision.

14 The decision shall be in writing, stating reasons for the decision,
15 and shall be signed by the members. A copy shall be provided by
16 the chief medical officer to the person requesting the test, or filing
17 the report, whichever is applicable, to the subject of the test, and,
18 when the subject is in a correctional institution, to the
19 superintendent of the institution, except that, when the subject of
20 the test or the person upon whose behalf the request for the test was
21 made is a minor, copies shall also be provided to the parent or
22 guardian of the person, unless the parent or guardian cannot be
23 located.

24 SEC. 6. Section 7555 of the Penal Code is repealed.

25 SEC. 7. Notwithstanding Section 17610 of the Government
26 Code, if the Commission on State Mandates determines that this
27 act contains costs mandated by the state, reimbursement to local
28 agencies and school districts for those costs shall be made pursuant
29 to Part 7 (commencing with Section 17500) of Division 4 of Title
30 2 of the Government Code. If the statewide cost of the claim for
31 reimbursement does not exceed one million dollars (\$1,000,000),
32 reimbursement shall be made from the State Mandates Claims
33 Fund.

34 SEC. 8. This act is an urgency statute necessary for the
35 immediate preservation of the public peace, health, or safety
36 within the meaning of Article IV of the Constitution and shall go
37 into immediate effect. The facts constituting the necessity are:

38 Law enforcement employees are undergoing unnecessary stress
39 and medical treatment in cases in which there has been an exposure

- 1 to HIV but no infection because of the inability to test prisoners for
- 2 HIV in a timely manner.

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